SB CIVIL MISC. APPEAL NO. 1052/2001
(UMESH KUMAR v GANPAT LAL & ANR.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 21.8.2006

Mr. J.P. Gupta for the appellant.
Mr. N.S. Chauhan for the respondents.

The appellant has challenged the order dated 26.4.2001 passed by the Workmen Compensation Commissioner, whereby the claim petition filed by the appellant has been dismissed.

According to the appellant he was engaged as a driver in a jeep, bearing registration No. RJ – 06 C-2675 and was going from Bar to Nimbaz. When he reached near Nimbaz, because a "Neelgai" suddenly appeared on the road, the appellant lost control of the jeep. Consequently, the jeep struck a tree and the appellant was injured. He was taken to Beawer Hospital and from there he was referred to Ahmedabad. Since he was injured while on duty, he filed a claim petition before the Workmen Compensation Commissioner. In the claim petition he stated that he was earning Rs. 2,000/- per month. Due to the said accident a steel rod had to be inserted in his leg. Therefore, he can no longer be employed as a driver.

The learned Commissioner was pleased to issue notice to the respondents, but despite the service of the notice, the respondent No. 1 did not put any appearance. Respondent No.2, the Oriental Insurance Company filed the written statement. In the written statement the Insurance Company pleaded that the veracity of the story narrated by the claimant is doubtful, for, the claimant is the son of respondent No.1, the owner of the jeep. At the time of the accident, the members of the family of respondent No.1 were travelling in the jeep. Therefore, the claimant was not working as a driver for the respondent No.1, but was driving the jeep in his personal capacity, as the son of the family. Therefore, the claimant has not been able to prove the existence of the employer employee relationship – a relationship which is sine quo non to the Workmen Compensation Act (henceforth, to be referred to as 'the Act'). Moreover, no FIR was lodged either by the claimant or by the family members travelling in the jeep. Since no FIR was lodged, no investigation was done by the police. Hence, there is no proof of the fact that the injuries caused to the claimant were caused in an accident during the course of employment. The Commissioner had framed as many as seven

issues. But, after going through the oral and the documentary evidence, vide award dated 26.4.2001, the claim petition was dismissed as aforementioned.

Mr. J.P. Gupta, the learned counsel for the appellant, has argued that there is no requirement for the lodging of a FIR under the Act. He has further argued that merely because the appellant happens to be the son of respondent No.1 that does not preclude him from being an employee of the father. Therefore, he is entitled to the compensation.

On the other hand, Mr. N.S. Chauhan, the learned counsel for the respondents, has reiterated the contentions raised by the respondent No. 2 before the Commissioner.

We have heard both the learned counsel for the parties and have perused the impugned award.

Before the benefit of the Act can be given to the claimant, it is essential that the relationship between the claimant and non-claimant be proved to be a relationship of an employee and employer. In the present case, the appellant has not been able to

establish the said relationship. In his cross-examination he admits that respondent No.1 is his father. Therefore, in the absence of any evidence, no presumption can be drawn that the claimant was in the employment of respondent No.1. Hence, relationship of employer employee has not been established in this case.

Moreover, but for the statement of the claimant, there is no evidence to prove that the injuries suffered by him were suffered during an accident in his employment. Hence, the Commissioner has rightly rejected the claim petition.

In the result, there is no force in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.